

ENFORCEABLE UNDERTAKING

Environment Protection Act 1970 (Vic)
Section 67D

The commitments in this undertaking are offered to the Environment Protection Authority by:

Western Region Water Corporation
ABN 67433835375
36 Macedon Road, Sunbury VIC 3429

1. DEFINITIONS

the Act means the *Environment Protection Act 1970 (Vic)*;

the Corporation means Western Region Water Corporation;

the EPA means the Environment Protection Authority;

Failure Mode means the manner in which a sewerage system may fail and it includes:

- (i) blockages;
- (ii) Hydraulic failure;
- (iii) equipment failure (e.g. pumps);
- (iv) structural failure (e.g. sewer defects); and
- (v) other (e.g. illegal dumping).

[Note, these are categories of failure modes.]

Second Independent Alarm System means an alarm system which will be a secondary alarm system with its own battery back up to send an alert in the event of the failure of other alarms;

Sewer Asset Management Plans means the Corporation's:

- (i) Manhole Asset Management Plan;
- (ii) Sewer Mains Asset Management Plan;
- (iii) Siphons Asset Management Plan;
- (iv) Rising Mains Management Plan; and
- (v) Sewer Pump Station Management Plan;

Tullidge Street Sewer Pump Station means the Corporation's sewer pump station located at Tullidge Street, Melton; and

Undertaking means the Enforceable Undertaking made pursuant to Section 67D of the Act.

2. BACKGROUND

2.1 EPA's role

EPA is a statutory body created by the Act, which has primary responsibility for the administration and enforcement of that Act.

2.2 Details of conduct/incident

On 31 March 2010 the Corporation identified untreated sewage overflowing from its Tullidge Street Sewer Pump Station into Toolern Creek (Melton).

The overflow commenced on 16 March 2010 and continued unnoticed until 31 March 2010 due to a malfunction of the automatic dialling equipment.

Samples collected from the creek indicated that there was an impact on water quality.

The Corporation estimated that 6ML of sewage was lost, consisting of approximately 2ML of untreated sewage and 4ML of tertiary treated sewage.

2.3 Alleged Contraventions

- (a) Between 16 March 2010 and 31 March 2010 by the discharge of sewage the Corporation caused or permitted an environmental hazard in contravention of section 27A(1)(c) of the Act.
- (b) Between 16 March 2010 and 31 March 2010 by the discharge of sewage into a waterway so that the waters are poisonous, harmful or potentially harmful, the Corporation polluted the waters of Toolern Creek in contravention of section 39(1) of the Act.

3. Key objectives of this Undertaking

This Undertaking is a binding agreement that will result in:

- Implementation of system improvements to minimise environmental hazards;
- Development of a sewage spill prevention strategy outlining clear actions, timelines and budget to minimise the likelihood of future sewer spills;
- Implementation of the actions identified in the sewage spill prevention strategy in a timely manner and measurement of improvements against defined key performance objectives;

- Implementation of educative programs for the Corporation's staff and promotion of the benefit of implementing the sewage spill prevention strategy; and
- A tangible benefit to the local community and the environment affected by the alleged breach.

4. Undertakings

Under Section 67D of the Act, the Corporation has offered and the EPA has agreed to accept as an alternative to taking Court proceedings, the following undertakings:

- 4.1 The Corporation undertakes to engage an independent expert acceptable to the EPA to audit the Sewer Asset Management Plans against internal and external design standards for sewer pump stations and industry best practice and to report the findings and recommendations of that audit to the Corporation and the EPA.
- 4.2 The Corporation undertakes to advise the EPA in writing of the independent expert it intends to retain and the EPA shall advise the Corporation within 7 days if the independent expert is acceptable. If the EPA does not respond within 7 days the Corporation may retain the nominated expert in compliance with this Undertaking.
- 4.3 The Corporation undertakes to respond in writing to the findings and recommendations of the report of the independent expert referred to in clause 4.1 of this Undertaking:
 - (i) indicating whether the Corporation accepts or rejects each finding;
 - (ii) where the Corporation rejects a finding, the reasons why that finding is rejected;
 - (iii) indicating whether the Corporation accepts or rejects each recommendation;
 - (iv) where the Corporation rejects a recommendation, the reasons why that recommendation is rejected; and
 - (v) where the Corporation accepts a recommendation, the estimated time by which the Corporation will implement that recommendation.
- 4.4 In the event that the Corporation rejects a finding or recommendation of the independent expert, the independent expert will provide a written response to the Corporation and the EPA.
- 4.5 In addition the Corporation will:
 - (i) incorporate best practice industry standards for the design of sewer pump stations and consult the land development industry, Water Services Association of Australia and EPA in regard to the requirements for 1 in 5 year storm events;

- (ii) Develop and document a comprehensive check list for inspection and maintenance of sewer pump stations, improve record keeping procedures and provide training of staff (field operators, project managers, contractors and customer relations) in the use of the check list; and
- (iii) Develop a methodology for conducting systematic challenge testing of automatic alarm systems associated with sewer pump stations.

The undertakings referred to in clauses 4.1 to 4.5 will be completed within 6 months of the date that this Undertaking is accepted and signed by the EPA.

Intended Outcome: Development of systems and procedures to provide consistent guidance to the Corporation and other relevant stakeholders to ensure the assets can be designed and operated with minimum likelihood of sewer spills having any adverse environmental impacts.

4.6 The Corporation undertakes to finalise a sewer spill prevention strategy which will outline actions to minimise sewer spills from the Corporation's assets.

- (i) The sewer spill prevention strategy will analyse possible causes of sewer spills, identify failure modes, review existing mitigation measures for dealing with the identified failure modes and their success rates, recommend specific actions for eliminating the root causes, identify roles and responsibilities and allocate budget for the actions.
- (ii) The sewer spill prevention strategy will, where appropriate, specify a completion date for works.
- (iii) Where the sewer spill prevention strategy sets a completion date for works prior to the expiry of this Undertaking, the Corporation undertakes to complete those works as part of this Undertaking.
- (iv) The Corporation commits to allocate funding in the next Water Plan for the continued implementation of the sewer spill prevention strategy.

This undertaking will be completed within 30 months of the date that this Undertaking is accepted and signed by the EPA.

Intended Outcome: The Corporation will have in place a clear strategy with contingency measures to avoid or minimise any adverse environmental impacts and consequences arising from sewer spills.

4.7 The Corporation undertakes to implement site specific measures for preventing the likelihood of sewer spills adversely impacting on the environment and they will include:

- (i) Installation of a Second Independent Alarm System at the Tullidge Street Sewer Pump Station;
- (ii) Installation of Second Independent Alarm System across all the relevant pump stations associated with the transfer of sewage within the Corporation's catchment; and
- (iii) Updating all the existing EDAC (Auto Dialler Alarm Interface) with a capability of providing alert of battery failures.

The undertaking in clause 4.7(i) will be completed within 1 month of the date that this Undertaking is signed and accepted by the EPA. The undertakings in clauses 4.7(ii) and 4.7(iii) will be completed within 12 months of the date that this Undertaking is signed and accepted by the EPA.

Intended Outcome: The Corporation has implemented reliable warning mechanisms for early detection of failures and preventing environmental impacts in a timely manner.

4.8 The Corporation undertakes to:

- (i) provide a summary of the proposed Undertaking to the residents affected by the March 2010 sewage spill and who were previously notified about the event;
- (ii) prior to the expiry of the Undertaking:
 - a. give a presentation on four separate occasions to the Community Reference Groups (CRG) and Customer Advisory Group (CAG); and
 - b. request comments from the CRG and CAG regarding the Corporation's asset management and planning practices for consideration in improving operational and design guidelines;
- (iii) publish the findings of a case study arising from the work completed pursuant to clauses 4.1 to 4.5 above in Australian Water Association Technical Journals;
- (iv) request comments from Vic Water and other water authorities on the sewer spill prevention strategy;
- (v) provide training to internal staff on the use of updated procedures; and
- (vi) publish the sewer spill prevention strategy on the Corporation's "Web Site".

This undertaking will be completed within 30 months of the date that this Undertaking is signed and accepted by the EPA.

Intended Outcome: The Corporation disseminates its learning to other water corporations which can lead to the implementation of best practices in sewage management activities and create awareness amongst the community to practice and apply source reduction measures.

4.9 The Corporation undertakes to fund environmental projects external to the Corporation's core business activities which will benefit the community and environment:

- (i) In consultation with Melbourne Water manage an environmental rehabilitation project along with Friends of Toolern Creek on a nominated section of Toolern Creek at a maximum cost of \$20,000 which will include the following works:
 - a. Planting of 5,200 native plants;
 - b. Maintenance of plants for a year; and
 - c. Removal of debris from the nominated section of the creek.

This undertaking will be completed within 24 months of the date that this Undertaking is signed and accepted by the EPA.

Intended Outcome: Direct benefit to the beneficial use of the aquatic environment and enhanced aesthetic enjoyment for the community.

4.10 The Corporation undertakes to ensure that the persons engaged in carrying out this Undertaking are adequately skilled and trained. The Corporation has identified that the relevant skills, expertise and training required to successfully deliver the undertakings are:

- (i) expertise in project management;
- (ii) appropriate skills with sewer pump station design;
- (iii) experience with automatic dialling system and SCADA;
- (iv) expertise in asset management;
- (v) community engagement skills;
- (vi) wide knowledge of water industry and "best practice" measures in operating sewer pump stations; or
- (vii) experience in environmental management.

To deliver this commitment, the Corporation will:

- (i) identify specific skills required to successfully deliver each undertaking contained within this Undertaking;

- (ii) record how the skills and expertise of those engaged to deliver each commitment meet the skills identified above.
- 4.11 The Corporation undertakes to pay the costs of its compliance with this Undertaking.
- 4.12 The Corporation undertakes to engage an independent auditor acceptable to the EPA to:
 - (i) assess the Corporation's compliance with the obligations detailed in clauses 4.1 to 4.9 of this undertaking; and
 - (ii) provide to the Corporation and the EPA a written audit report detailing the findings of the assessment detailed in clause (i) above.
- 4.13 The Corporation undertakes to advise the EPA in writing of the independent auditor it intends to retain and the EPA shall advise the Corporation within 7 days if the independent auditor is acceptable. If the EPA does not respond within 7 days the Corporation may retain the nominated auditor in compliance with this Undertaking.
- 4.14 In the event that the independent auditor finds that the Corporation has not complied with this Undertaking:
 - (i) the Corporation must advise EPA:
 - i. whether it accepts or rejects the auditor's findings;
 - ii. if it accepts the auditor's findings the Corporation undertakes to complete further works to achieve compliance;
 - iii. if it rejects the auditor's findings the reasons for that rejection;
 - (ii) and the Corporation rejects the auditor's findings, the EPA must advise the Corporation within 14 days of receiving the Corporation's response whether any further works are required to achieve compliance and if so what works are required; and
 - (iii) the Corporation undertakes to complete any further works identified by the EPA to achieve compliance.
- 4.15 The Corporation undertakes to repeat the actions required by clauses 4.12 and 4.14 until the EPA is satisfied that the Corporation has complied with the Undertaking.
- 4.16 The Corporation undertakes to provide written progress reports every 6 months from the date of this Undertaking until the Undertaking is terminated. In addition, the Corporation will supply to the EPA, on request, all documents and information required to enable the EPA to determine compliance with the terms of this Undertaking.
- 4.17 The Corporation has estimated the cost of compliance with this Undertaking to be up to approximately \$200,000. The Corporation undertakes to provide a detailed cost break down to the EPA within two months of the completion of this Undertaking.

5. Acknowledgement

- 5.1 The Corporation acknowledges that EPA has alleged the Corporation has contravened provisions of the Act. The Corporation has conducted its own investigations into both the March 2010 sewage spill and the necessary remedial measures required to minimise the likelihood of repetition of the incident.
- 5.2 The Corporation acknowledges that the EPA:
- (i) may issue a media release on execution of this Undertaking referring to its terms and to the concerns of EPA which led to the Undertaking;
 - (ii) may from time to time publicly refer to this Undertaking; and
 - (iii) will make this Undertaking available for public inspection on a register of undertakings and that this Undertaking will remain on the register upon completion of all undertakings contained within, in accordance with section 67G of the Act.
- 5.3 Further, the Corporation acknowledges that:
- (i) as provided in section 67D(4) of the Act, EPA's acceptance of this Undertaking means that proceedings may not be brought by EPA against the Corporation for the offences constituted by the contraventions alleged in clause 2.3 of this Undertaking while this Undertaking is in force;
 - (ii) as provided in section 67D(5) of the Act, if the Corporation withdraws this Undertaking before it has been fulfilled, proceedings may be brought for the offences constituted by the contravention alleged in clause 2.3 of this Undertaking;
 - (iii) EPA's acceptance of this Undertaking does not affect EPA's power to bring proceedings against the Corporation, to issue penalty infringement notices or instigate any other enforcement action against the Corporation in relation to any subsequent contravention or alleged contravention of the Act that is not the subject of this Undertaking, whether or not the subsequent contravention or alleged contravention involves a provision of the Act that is referred to in clause 2.3;
 - (iv) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Undertaking or arising from subsequent conduct.
- 5.4 The Corporation acknowledges that this Undertaking has no operative force until accepted and signed by EPA, and the Corporation and EPA acknowledge that the date of this Undertaking is the date on which it is accepted and signed by EPA.

- 5.5 The Corporation undertakes to ensure that any public reference made by the Corporation to the actions contained within the Undertaking shall also make reference to the Undertaking.

6. Statement of regret

- 6.1 The Corporation regrets the March 2010 sewage spill and discharge of effluent to Toolern Creek.
- 6.2 The Corporation recognises that the wellbeing of our community is largely dependent upon the health of the environment. As such, the Corporation and its staff will strive for improved environmental performance and embrace a culture of continual improvement and environmental leadership.

7. Assurance about future behaviour

The Corporation acknowledges that through the implementation of the actions outlined within this Undertaking, it will reduce the risk and lower the consequence of future sewer spill incidents. The Corporation has undertaken an extensive review of its internal processes with a view to improving the timeliness of its response to such incidents.

8. Effect of non-compliance

The Corporation acknowledges that failure to comply with this Undertaking may result in the Authority seeking to enforce this Undertaking in the Magistrates' Court.

9. Termination of Enforceable Undertaking

This Undertaking will terminate thirty months from the date that this Undertaking is signed and accepted by the EPA. All undertakings contained within part 4 of this Undertaking must be completed by this time. Failure to do so may result in the Authority taking action to enforce this Undertaking.

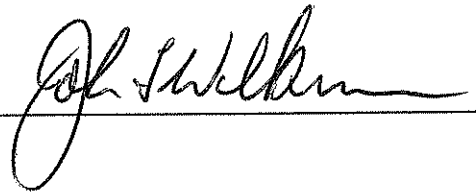
The Common Seal of
Western Region Water Corporation
was hereto affixed
in the presence of:



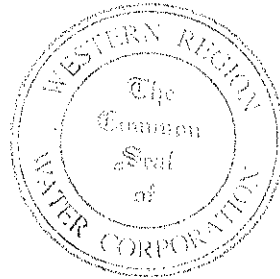
Chairman



Director



Managing Director



Accepted by the Environment Protection Authority under section 67aD of the
Environment Protection Act 1970 by its CEO and Deputy Chairman:



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JOHN MERRITT
CEO and Deputy Chairman of the Environment Protection Authority

Date: 25.4.4